No. 21888

In the

United States Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SALEM BUILDING TRADES COUNCIL, AFL-CIO,
Respondent.

BRIEF OF INTERVENOR

On Petition for Enforcement of an Order of the National Labor Relations Board

McCOLLOCH, DEZENDORF & SPEARS
LEWIS K. SCOTT
JAMES H. CLARKE
JOHN C. WRIGHT, JR.

8th Floor, Pacific Building
Portland, Oregon 97204

Attorneys for Intervenor Cascade Employers Association, Inc.

SUBJECT INDEX

AUTHORITIES

Table of Cases

Statutes

No. 21888

In the

United States Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SALEM BUILDING TRADES COUNCIL, AFL-CIO,
Respondent.

On Petition for Enforcement of an Order of
the National Labor Relations Board

BRIEF OF INTERVENOR

Introduction

This brief is submitted by Intervenor Cascade Employers Association, which was the charging party before the Board and represents its employer-members Reimann Construction Company (Reimann) and Northridge Industries (Hyatt).

Intervenor will comment on two issues:

1. Whether Respondent's picketing violated § 8(b)(4) of the Labor Management Relations Act in the absence of a present contract or business relationship between the picketed neutral employers and the primary employer; and

2. Whether Respondent's picketing was merely a

public appeal for a consumer boycott of the primary employer's products, and consequently was beyond the scope of § 8(b)(4) under *NLRB v. Fruit & Vegetable Packers (Tree Fruits)*, (1964) 377 US 58.

Applicable Statutory Provisions

Section 8 of LMRA provides:

> "(b) It shall be an unfair labor practice for a labor organization or its agents —
>
> * * * * *
>
> "(4) * * * (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where * * * an object thereof is
>
> * * * * *
>
> "(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing; * * *"

Argument

I. Respondent's picketing violated § 8(b)(4) because its object was to disrupt further business dealings between Reimann and the picketed neutral employers and others; the absence of a present contract or business relationship between the picketed neutral employers and the

primary employer only emphasizes the prohibited secondary effect.

Respondent could have lawfully picketed the two job sites while construction was in progress. Instead, it waited until it was notified by Reimann that both jobs had been completed. At the time of the picketing, Reimann had no contract or other present business relationship with either Hyatt or Candelaria, and Respondent contends that in such case it cannot be found to have acted for the illegal object of "forcing or requiring any person * * * to cease doing business with any other person * * *." There are two errors in its approach: It considers too short a period of time and too few employers.

a. According to Respondent, the Board can consider only the time during which picketing occurred; if no business relationship *then* existed between the picketed neutrals and the primary employer, no unfair labor practice has been committed. Yet there concededly had been such a relationship in the past, and Respondent's view ignores the impact of present picketing on *future* business dealings between them. While there is no evidence of the specific plans of Hyatt and Candelaria to expand their operations, the stipulation does disclose — and the Board found — that both are engaged in businesses which grow through the con-

struction of new facilities. Hyatt, in fact, has grown until it now operates 38 motels in 14 states. The Board correctly found that:

> "* * * As a general contractor in the construction industry in the area where both Northridge and Candelaria operate, Reimann remained within that class of employers to whom future construction contracts might be awarded. Thus, it is apparent that at the very least an object of the picketing was forcing and requiring Northridge and Candelaria to refrain from utilizing Reimann's services for any future construction. * * *" (Decision and Order, p 6)

b. Secondly, Respondent's view considers only Hyatt and Candelaria as potential customers of Reimann. Whether or not either continues to grow, there are hundreds and thousands of other businesses in the market for construction work in Oregon. Respondent's picketing was not designed merely to strike at the primary employer through these two picketed businesses; more generally, it was intended to serve notice on every neutral business, whether it be a motel or restaurant chain, a housing developer or any other, that using Reimann as a construction contractor is unwise and dangerous because the neutral will be picketed by Respondent after the job is finished and commercial operations have begun in the new facility. Respondent intended, by its picketing, to advise all neutral employers of the

economic reprisals which would result if they should do business with Reimann.

Section 8(b)(4) is not limited to cases in which the coerced neutral employer is himself the one whose business relationship with the primary employer is disrupted. It is sufficient that pressure is put upon "any person" with an object of forcing or requiring "any person * * * to cease doing business with any other person * * *." The "person" referred to in § 8(b)(4)(ii) need not be the same "person" referred to in § 8(b)(4)-(ii)(B). It is a violation of the Act to coerce a neutral employer so that other neutral employers will refrain from doing business with the primary employer. *Intl. Longshoremen's Assn., Local 1224 (Jess Edwards, Inc.)*, (1966) 160 NLRB No. 65, 63 LRRM 1025.

In sum, the Board properly looked beyond the two months' period in which picketing occurred and the two employers who were picketed — it had to look (as Respondent itself undoubtedly did) to the future and to other neutral employers who were also the targets of Respondent's activities. As the Board concisely stated:

> "* * * To hold, as Respondent would have us do, that upon the completion of one contract the neutral employers, by virtue of their past business dealings, become fair game for picketing pressures by a union seeking, as here, to enforce its blacklist of the primary employer, would be to apply that Section in a manner inconsistent with both its terms and the basic

policy considerations underlying its enactment." (Decision and Order, p 6)

II. Respondent's picketing was not lawful under the rule of the *Tree Fruits* case.[1]

Respondent suggested before the Board that its picketing was merely an appeal to the public to boycott the "products" of the primary employer (i.e., the two buildings) by following those "products" to a secondary situs and asking the public not to use them.

In *Tree Fruits*, the union first struck packers and warehouses which were selling apples to the Safeway chain of retail food stores. The union then instituted a consumer boycott against the apples in support of their strike. It sent letters to the store managers explaining the purpose of the picketing and enclosed copies of written instructions issued to the pickets telling them not to interfere with deliveries or ask customers not to patronize the stores. Thereafter, 46 stores were picketed. The pickets' signs said:

> "To the Consumer: Non-union Washington State apples are being sold at this store. Please do not purchase such apples. Thank you. * * *"

1. *NLRB v. Fruit & Vegetable Packers (Tree Fruits)*, supra, (1964) 377 US 58.

The pickets distributed handbills stating:

"This is not a strike against any store or market."

The Supreme Court held that the picketing did not violate § 8(b)(4). It explained its decision as follows:

> "* * * When consumer picketing is employed only to persuade customers not to buy the struck product, the union's appeal is closely confined to the primary dispute. The site of the appeal is expanded to include the premises of the secondary employer, but if the appeal succeeds, the secondary employer's purchases from the struck firms are decreased only because the public has diminished its purchases of the struck product. On the other hand, when consumer picketing is employed to persuade customers not to trade at all with the secondary employer, the latter stops buying the struck product, not because of a falling demand, but in response to pressure designed to inflict injury on his business generally. In such case, the union does more than merely follow the struck product; it creates a separate dispute with the secondary employer." (377 US at 72)

Tree Fruits has no application to the present situation. In the first place, there is no similarity between the commodity which was the subject of the primary dispute in that case and the buildings from which the neutral employers conduct their businesses in this one. In *Tree Fruits*, the struck product was only one of hundreds of products sold by the neutral employer. In this case, Respondent's picketing restrained the market-

Conclusion

The Respondent has enmeshed "unoffending employers and others * * * in controversies not their own."[2] It has done so for the purpose of causing these neutral employers and others who are made aware of the situation to refrain from using the services of the primary employer.

For the foregoing reasons, the picketing violated § 8(b)(4), and the Board's order should be enforced.

Respectfully submitted,

McCOLLOCH, DEZENDORF & SPEARS
LEWIS K. SCOTT
JAMES H. CLARKE
JOHN C. WRIGHT, JR.

Attorneys for Intervenor Cascade Employers Association, Inc.

2. *N.L.R.B. v. Denver Bldg. & Const. T. Council*, (1951) 341 US 675 at 692.